

F I L E D

AUG 29 2000

**BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS**

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
ANN K. NEUHAUS, M.D.)
Kansas License No. 4-21596)
_____)

Docket No. 00-HA-20

EMERGENCY ORDER FOLLOWING HEARING

NOW ON THIS Twenty-eighth Day of August, 2000, this matter comes on for hearing. Kelli J. Benintendi, Associate Counsel, and Stacy L. Cook, Litigation Counsel, appear for Petitioner Board of Healing Arts. Ann K. Neuhaus, M.D., Respondent, appears in person and through Donald Strole, Attorney at Law.

Petitioner and Respondent offer testimony and exhibits and rest. Written stipulations signed by counsel for Petitioner and Respondent are offered and accepted. Upon the conclusion of the testimony, Respondent makes an oral motion to stay the order of emergency limitation dated August 14, 2000. That motion is denied.

The Presiding Officer makes the following findings of fact, conclusions of law and orders:

1. The Board and Licensee entered into a Stipulation and Agreement and Enforcement Order which was filed in the Board office on October 18, 1999. Paragraph 10(a)(i) of that agreement prohibits Licensee from purchasing any controlled substances for office use other than injectable Valium or its generic equivalent.
2. Licensee filed a written request dated July 24, 2000 asking that the Stipulation and Agreement and Enforcement Order be modified to permit her to use ketamine in addition to Valium (diazepam) for sedating patients upon whom in-office surgery was to be performed.
3. A Notice of Conference Hearing on Licensee's request was filed in the Board office on

July 26, 2000, setting this matter for hearing before the Board at 10:00 a.m. on August 12, 2000. Following the conference hearing, the Board issued an order dated August 14, 2000 denying Respondent's request and imposing additional limitations upon Respondent's license. More specifically, the emergency order prohibited Respondent from administering or ordering any anesthetic agent, controlled substance or narcotic to a patient. Because the emergency order was not foreseen when the Notice of Conference Hearing was served, Respondent was not advised in advance that her license might be adversely affected. Thus, the emergency order required that a hearing be held within ten working days.

4. The emergency order of limitation was further explained in a letter to Respondent dated August 16, 2000 from the Board's General Counsel. The emergency order was not intended to preclude Respondent from administering a local anesthetic. The order did prohibit Respondent from using those categories of drugs to achieve regional or general anesthesia or conscious sedation. Additionally, the parties agreed during the hearing that the emergency order did not prohibit the use of diazepam to control seizures.

5. The sole issue to be resolved by this hearing is whether Respondent may administer drugs for regional or general anesthesia or conscious sedation purposes without creating an immediate threat to the public health, safety or welfare. Whether Respondent should be subject to discipline for engaging in specific acts in a manner alleged to be below the standard of care is not an issue in an emergency hearing.

6. For purposes of determining whether there exists an immediate threat to the public health, safety or welfare, the Presiding Officer concludes that the likelihood of patient injury is not the only factor. Rather, the nature and severity of potential injury should be considered.

Additionally, if there is a significant threat of danger to the public, the ease with which the threat is reduced should be a consideration in determining whether the public is appropriately protected.

7. In the present case, the parties appear to agree that the minimum standards of care for conscious sedation are stated in the Practice Guidelines for Sedation and Analgesia by Non-Anesthesiologists, a 1996 report by the American Society of Anesthesiologists (ASA). In applying these standards, and in relying upon the expert opinion of an anesthesiologist, the Board does not hold Respondent to the standard of care expected of an anesthesiologist. The expert testimony of the anesthesiologist is helpful to determine whether or not Respondent practices within the ASA standards for non-anesthesiologists and what consequences might occur as a result of a deviation from those standards.

8. The Presiding Officer finds that Respondent does not adhere to the standards of care expressed in the ASA guidelines for non-anesthesiologists when administering conscious sedation in the following respect:

- a. The patient's medical history does not reflect previous adverse experiences with sedation or anesthesia;
- b. there is not a focused physical examination of the cardiovascular and pulmonary systems beyond a simple recording of blood pressure and pulse; a focused evaluation would include at least an auscultation of the heart and lungs and documentation thereof.
- c. pre-, intra-, and post-procedure recordings of vital signs should be both monitored and documented; Respondent states that she does not monitor intra- and post-procedure vital signs;
- d. an anesthesia record that includes periodic documentation of vital signs and

oxygen saturations, is not created;

e. the anesthesia record that is created does not document timing or incremental doses of each drug administered but rather merely states the total amount of each drug administered;

f. the discharge criteria, such as level of alertness, blood pressure, pulse and oxygen saturation, and a method for assessing a patient for discharge are not clearly identified or documented;

g. dismissal of a patient who has received a reversal agent is not intentionally delayed past the effectiveness of the reversal agent. As a consequence, unexpected and unmonitored recurrent sedation can occur if the anesthetic agent has not sufficiently been metabolized.

9. Additionally, the Presiding Officer finds that Respondent's practice of keeping unmarked pre-drawn syringes is a practice falling well below the standard of care and unreasonably subjects patients to danger.

10. Finally, the Presiding Officer is concerned that Respondent is only able to presume staff are capable of performing emergent patient resuscitation based upon their formal training. There is no evidence that Respondent has instructed each staff member in properly performing her role during an emergency or that their competency in patient resuscitation has been demonstrated.

11. The medical record is necessary for reasons beyond merely creating documentation for later review. By monitoring and documenting information periodically, the physician's attention is automatically drawn to those items which, as stated in the ASA guidelines, are necessary for adequate patient protection.

12. The Presiding Officer finds that the practices deviating from the standard of care as described above are not the result of malice or lack of concern for patients' well being.

13. The Presiding Officer also finds that Respondent's practices that are below the standard of care do create a danger to the public that, while not necessarily likely to occur with great frequency, is of such gravity that when an incident does occur, patient harm is all but inevitable.

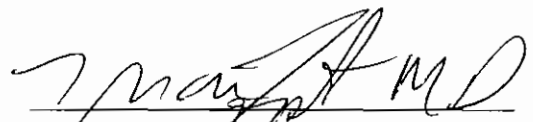
14. The Presiding Officer finds that Respondent is sufficiently knowledgeable of the indication and usage, as well as of the contraindications of ketamine so that her request for authority to use this drug should be reconsidered upon request following termination of the emergency order.

IT IS, THEREFORE, ORDERED that the emergency order issued by the Board on August 14, 2000 remains in effect until such time as Respondent is able to demonstrate that the deviations from the standard of care have been addressed.

IT IS FURTHER ORDERED that Respondent may petition the Board to modify or terminate this emergency order showing that the deviations from the standard of care have been addressed.

PLEASE TAKE NOTICE that either party may seek review of this emergency order by filing a petition for review with the Board. Additionally, a party may seek judicial review of a non-final agency order upon service of an emergency order. Any petition for review shall be served upon the Board's Executive Director at 235 S. Topeka Blvd., Topeka, KS 66603.

DATED THIS ____ day of August, 2000.



Kyle M. Tipton, M.D.
Presiding Officer

Certificate of Service

I certify that a true copy of the foregoing order was served this 29th day of August, 2000 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Ann K. Neuhaus, M.D.
205 W. 8th Street
Lawrence, Kansas 66044

Donald Strole
16 E. 13th Street
Lawrence, Kansas 66044

and a copy was hand-delivered to the office of:

Kelli J. Benintendi
Kansas Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603

A handwritten signature in cursive script, appearing to read "Mark A. Appel", is written over a horizontal line.